**Criminal misc. application no.150 of 2003**

Yakoob------- Petitioner

Versus

State of Uttaranchal and others Respondents

**Hon'ble M.M. Ghildiyal, J.**

This is an application under section 482 Cr.P.C. challenging the order dated 2.6.2003 passed by the Additional Sessions Judge/Fast Track Court VI Dehradun rejecting the application of the applicant moved under section 311 Cr.P.C.

Section 311 Cr.P.C. provides that any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The power can be exercised if in the opinion of the Judge the evidence appears to be essential to the just decision of the case. The learned Judge has recorded his finding that the application has been moved just to delay the case. Further as already held by Hon'ble Supreme Court in a number of cases the application under section 311 Cr.P.C. cannot be allowed only just to fill up the lacuna. The learned Sessions Judge has already recorded finding to the effect that by re-examining the Investigation Officer will not serve the purpose of section 311 Cr.P.C.

For the reasons stated above the application is without merit and is dismissed.

**(M.M. Ghildiyal, J.)**

August 01, 2003
MPS